

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2003-000681

10/07/2010

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT

D. Benitez

Deputy

IN RE THE MATTER OF  
RONDA M MANDELERT

GERALD G EASTMAN

AND

MARK C ASHWORTH

GENE R STRATFORD

DR. RONN LAVIT  
1130 E MISSOURI STE 570  
PHOENIX AZ 85014  
DOCKET-FAMILY COURT CCC  
FAMILY COURT SERVICES-CCC

MINUTE ENTRY

Following an evidentiary hearing on August 12, 2010 at which Petitioner Ronda M. Mandelert (Mother) and Respondent Mark C. Ashworth (Father) both testified, the Court has had under advisement the Expedited Motion for Modification of Parenting Time and for Court to Make Determination Re: Educational Placement and the Amended Petition to Modify Child Custody, Parenting Time, and Final Education Decision-Making Authority (Petition). After considering the evidence presented, the Court finds and rules as follows:

The parties are the parents of Alyssa Ashworth (Minor Child), a daughter who was born on August 25, 2002.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2003-000681

10/07/2010

The Minor Child was enrolled in kindergarten at Eagle Ridge Elementary School in the Paradise Valley School District.<sup>1</sup> Because neither party resides within the school district, the Minor Child was required to obtain a variance to be allowed to attend Eagle Ridge.

On the Minor Child's first day of kindergarten, Mother learned that her teacher, Ms. Lucky, was acquainted with Father and the Minor Child as a result of a gym class in which Father had previously enrolled the Minor Child. Exhibit 2 at p. 3. Father testified that, upon learning of Ms. Lucky's acquaintance with Father, Mother immediately asked to have the Minor Child assigned to a different class. Mother testified that she asked the principal to transfer the Minor Child out of Ms. Lucky's class "because of a bias thing." Mother's request prompted a meeting that same day among the parties, the school principal, and the school social worker. As a result of this meeting, Mother agreed to allow the Minor Child to remain in Ms. Lucky's class.

Father testified that, on another occasion, Mother went to the school office and "was complaining loudly in front of a PTO member about the school itself."

On May 12, 2009, when the Minor Child was in first grade, Mary E. Parese, Eagle Ridge's principal, sent the parties a letter stating that the Minor Child would not be allowed to continue attending Eagle Ridge due to her poor attendance record during the 2008-2009 school year. Exhibit 3. The letter noted that the Minor Child had been absent thirteen days of school, and had been tardy an additional fourteen days. *Id.*

Father testified that, after the parties received the letter from the school, he sent a letter to the Eagle Ridge administration on May 18, 2009 asking the school to reconsider its decision. The letter Father drafted states in part,

We promise that we will not have Alyssa late or absent from school to the extent of this year or last. We both had her out for vacations. That will no longer happen. There were times she was a little sick but still could have been to school. That will no longer happen.

Exhibit 3.

A few days later, on May 21, 2009, Principal Parese sent the parties a letter agreeing to admit the Minor Child to Eagle Ridge for the 2009-2010 school year on a "probationary" basis. Exhibit 3. This letter emphasized that the Minor Child's continued enrollment at Eagle Ridge

---

<sup>1</sup> Father testified that the parties chose to enroll the Minor Child at Eagle Ridge because of the school's location between the parties' respective homes. Mother testified that Father unilaterally enrolled the Minor Child at Eagle Ridge without her agreement.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2003-000681

10/07/2010

depended, *inter alia*, on her attendance at the school and the maintenance of “[a]ppropriate parent communication to staff.” *Id.*

In November 2009, when the Minor Child was in second grade, an incident occurred in which Mother complained to the Minor Child’s teacher, Mrs. Turner, about not being selected as a parent chaperone for a field trip that was to take place on November 25<sup>th</sup>. Father testified that, in the presence of the second grade class, Mother “basically yelled at” the teacher about what Mother perceived to be favored treatment shown to the mother of another child in the class. According to Father, Mother complained, within the hearing of the class, that she had never been selected to chaperone field trips while the mother of another child was always selected. A letter written by the Principal Parese on December 7, 2009 describes the incident similarly and states that, by identifying another child’s mother by name “in a negative way,” Mother caused the child “some concern.” Exhibit 3. Principal Parese’s December 7<sup>th</sup> letter concludes,

Because this is a pattern of continuing negative parent communication and behavior, I am revoking [the Minor Child’s] transfer request effective Friday, December 18, 2009.

*Id.*

After Principal Parese sent her December 7<sup>th</sup> letter, Mother wrote Mrs. Parese a letter dated December 17, 2009, in which she stated in part, “I would like to apologize for the lack of good judgment on my part to discuss the field trip issue in class where there were other children. I was not thinking about this affecting the children...” See December 17, 2009 letter signed Ronda Ashworth, attached as an exhibit to Petitioner’s Response to Expedited Motion of Parenting Time and for the Court to Make Determination Re: Educational Placement.

At the August 12<sup>th</sup> hearing, Mother presented a very different version of the November 2009 incident. Mother testified that, when she asked Mrs. Turner about chaperoning the field trip, Mrs. Turner “was very testy” in response. Mother acknowledged that she asked Mrs. Turner whether another child’s mother, whom Mother identified by name, would be chaperoning the field trip. Mother insisted, however, that she and Mrs. Turner were in the back of the room at the time of this conversation, and denied that any of the children in the classroom were able to hear their conversation. She further testified that the description of the incident set forth in Principal Parese’s letter of December 7<sup>th</sup> is “inaccurate,” and that she is “very disappointed” in the December 7<sup>th</sup> letter.

Mother’s testimony at the August 12<sup>th</sup> hearing suggests that Mother believes that she did nothing wrong in connection with the November 2009 incident. If, however, the November 2009 incident were as innocuous as Mother portrayed in her testimony, one wonders why Mother sent Principal Parese a letter on December 17, 2009 apologizing for her “lack of good

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2003-000681

10/07/2010

judgment.” *See* Petitioner’s Response to Expedited Motion of Parenting Time and for the Court to Make Determination Re: Educational Placement. Why would Mother apologize in writing on December 17, 2009 if, as she now asserts, she had nothing to apologize for?

The revocation of the Minor Child’s variance to attend Eagle Ridge required the parties to enroll her in a new school for the second half of the 2009-2010 school year.

On December 17, 2009, Respondent filed an Expedited Motion for Modification of Parenting Time and for the Court to Make Determination Re: Educational Placement. The parties subsequently stipulated that the Minor Child shall attend Desert Willow Elementary School, in the Cave Creek Unified School District, through fifth grade. *See* Stipulated Order dated February 11, 2010.

This matter was originally set for an evidentiary hearing on June 22, 2010. By agreement of the parties, the matter was reset for a hearing on August 12, 2010. With leave of court, Respondent filed his Petition, which superseded his Expedited Motion for Modification of Parenting Time and for Court to Make Determination Re: Educational Placement.

At the August 12<sup>th</sup> hearing, Father testified that Mother “keeps [the Minor Child] out of school on a regular basis” without adequate justification. He testified that the Minor Child was absent fourteen days in kindergarten, and that Mother was the parent who kept the Minor Child home from school on each of those days. He further testified that, in first grade, the Minor Child again missed fourteen days, and on eleven of those fourteen days, Mother was the parent who kept the Minor Child home from school.

Mother testified that she has “not once” kept the Minor Child home without justification. She denied Father’s testimony that she was solely responsible for the Minor Child missing fourteen days of school in kindergarten. She explained the Minor Child missed seven days of school that year due to a tonsillectomy, and that some of those seven days fell during Father’s parenting time. On cross-examination, Father acknowledged that the Minor Child had a tonsillectomy in kindergarten. Mother further testified that the Minor Child also missed school days in kindergarten because of “severe allergies” and because she underwent a surgical procedure to have “tubes put into her ears” due to recurring ear infections.

Father introduced medical records to show that Mother has kept the Minor Child out of school without medical justification, such as days on which the Minor Child was running a temperature that was barely elevated, if at all. *See* Exhibit 4. Mother, in turn, suggested that Father is insufficiently sympathetic when the Minor Child falls ill, testifying that she once received a phone call from the school nurse reporting that Father had sent the Minor Child to school with a temperature of 102 degrees.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2003-000681

10/07/2010

Father requests that he be granted final decision-making authority on issues relating to the Minor Child's education. Petition at p. 4. In support of his request, Father argued that he has demonstrated that he is "more willing to pay attention to the day-to-day aspects of" the Minor Child's education, and that problems with the Minor Child's attendance and Mother's interaction with school staff demonstrate Mother's "unwillingness to separate herself sufficiently to make the type of quality education decisions that Father can make."

In the Court's view, the problems cited by Father at the August 12<sup>th</sup> hearing to justify his request for final decision-making authority relate less to decisions about the Minor Child's education than to the manner in which the parties have implemented decisions once made. Much testimony was presented, for example, about the November 2009 "field trip" incident that led to the revocation of the Minor child's variance to attend Eagle Ridge. The Eagle Ridge administration stated that it revoked the Minor Child's variance due to "a pattern of continuing negative parent communication and behavior." Exhibit 3. Awarding Father final decision-making authority for the Minor Child's education will not change the parties' "communication and behavior" with school staff. The other issues Father has cited, such as problems with the Minor Child's school attendance, would likewise not be solved by giving Father final decision-making authority over educational matters.

Based on the evidence presented and the Court's review of the file in this matter, it appears that Mother's counsel was correct when he noted that, although the parties' relationship in the past has been "rocky," the conflict between the parties has diminished over time. Many of the issues cited by Father, such as Mother's request to change the Minor Child's teacher on the first day of kindergarten, are not recent, but occurred several years ago. As Father has acknowledged, the parenting coordinator in this matter, Dr. Ronn Lavit, has helped the parties to improve their ability to communicate constructively and reach joint decisions. Further, the Court finds it significant that each party testified that the Minor Child is well adjusted, and that she has a good relationship with each of her parents. Under these circumstances, the Court is hesitant to disturb the existing custody arrangement.

Further, it is significant that, at least at present, the parties do not appear to be in disagreement about decisions regarding the Minor Child's education. They have agreed that she shall be enrolled at Desert Willow Elementary, a school that Mother testified she "loves," and that the Minor Child shall remain enrolled there until she completes fifth grade in 2013. Although Father testified that Mother has not been supportive of the Minor Child's participation in extracurricular activities until recently, it appears that Mother has had a change of heart. Mother testified that she takes the Minor Child to weekly dance lessons, and that she is supportive of the Minor Child's participation in karate during Father's parenting time.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2003-000681

10/07/2010

In light of the foregoing, the Court finds that Father has failed to meet his burden of justifying his request to change the existing custody arrangement to allow him final decision-making authority over the educational matters. Accordingly,

**IT IS ORDERED** denying Father's request for final decision-making authority over educational decisions affecting the Minor Child.

Father also seeks a modification to the parenting time schedule. Petition at p. 4. Under the existing parenting time schedule, Father has overnight parenting time with the Minor Child on alternate Wednesdays. During Week One, Father has parenting time from Wednesday morning through Saturday at 7 p.m. During Week Two, Father has parenting time on Wednesday with no overnight, and again from Thursday until Saturday at 7 p.m. Father asks that the parenting time schedule be changed so that he has overnight parenting time every Wednesday, instead of every other Wednesday.

In support of his request to modify the parenting time schedule, Father argued that allowing him Wednesday overnight parenting time every week, instead of every other week, would promote predictability in the Minor Child's schedule, and therefore greater stability for her. He also indicated that granting his request would not unduly limit Mother's parenting time, noting that his request, if granted, would still leave the Minor Child in Mother's care overnight four days every week. Arguing that the Minor Child has a history of frequent absences and tardies at school while in Mother's care, Father testified that granting his request will enable him to make sure that the Minor Child gets to school on time every Thursday morning.

At the August 12<sup>th</sup> hearing, Mother offered a number of reasons to support her opposition to Father's request. Mother testified that allowing the Minor Child to spend two additional Wednesday overnights per month with Father would be "harmful for her psychologically" because Father is purportedly "way too strict with" the Minor Child. In support of her position, she offered the following examples:

- (1) Mother asserted that Father flatly prohibits the Minor Child from waking him at night, testifying that the Minor Child has expressed anxiety about what she should do if there were ever a fire at Father's house during the night. In his testimony, Father denied ever telling the Minor Child that she cannot wake him at night, and further testified that the Minor Child has, in fact, "called out to" him after she has gone to bed.
- (2) Mother testified that, in May or June of 2010, the Minor Child told her that Father had put the Minor Child in time-out "all day" on a Saturday for "spilling something on the floor." Mother further testified that the severity of the punishment imposed by Father later caused the Minor Child to have "panic attacks left and right." In his

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2003-000681

10/07/2010

testimony, Father denied ever having put the Minor Child in time-out for an entire day, stating that he has never put her in time-out longer than three minutes.

- (3) Mother testified that, last November, Father made the Minor Child “touch a snake” against her will, which later caused the Minor Child to have nightmares. Father denied this. He testified that he and the Minor Child attended an educational event at a public library at which children were permitted to view and pet a snake. Father testified that he encouraged the Minor Child to touch the snake, as numerous other children at the event were doing. When the Minor Child refused, he dropped the issue.

Clearly, the reasons offered by Mother to justify her opposition to Father’s request to modify the parenting time schedule are based on factual assertions that are disputed by the parties. Even assuming, however, the accuracy of Mother’s version of the events described above, the problems that Mother describes will not be solved by denying Father’s request. If, for example, the Minor Child suffers anxiety as a result of her perception that she is prohibited from waking Father even in the event of a house fire, the Minor Child’s anxieties will not be assuaged by denying Father’s request to modify the parenting time schedule. Instead, her anxieties can only be assuaged if both parties discuss the matter with the Minor Child to reassure her that her concerns are unfounded. Likewise, denying Father’s request to modify the parenting time schedule will not assuage the Minor Child’s anxieties about snakes or the allegedly excessive length of Father’s time-outs. These are issues that can only be dealt with by communication among the parties and the Minor Child.

Mother also testified that Father should not be granted additional Wednesday overnight parenting time because Father does not always give the Minor Child her medication and because he does not allow the Minor Child to call Mother on Fridays. Again, even assuming the truth of these assertions, they relate to problems that will not be solved by denying Father’s request. Even if Mother is correct that Father improperly fails to administer medication to the Minor Child, this problem will not be solved by denying Father two additional overnights per month. Likewise, Mother’s complaint about Friday phone calls with the Minor Child has nothing to do with the issue of parenting time on Wednesdays.

The Court agrees with Father that establishing a consistent weekly parenting time schedule will provide greater stability for the Minor Child. The Court also believes that, because the majority of the Minor Child’s absences and tardies have occurred during Mother’s parenting time, the Minor Child’s attendance record would be improved by allowing the Minor Child more

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2003-000681

10/07/2010

overnights with Father. The Court therefore grants Father's request for additional Wednesday overnights with the Minor Child.<sup>2</sup> Accordingly,

**IT IS ORDERED** granting Father's request to modify the parenting time schedule. Father shall have parenting time with the Minor Child every week from Wednesday morning until Saturday at 7 p.m.

**IT IS FURTHER ORDERED** that each party shall be responsible for transporting the Minor Child to school on time during such party's parenting time.

Father requests that the parties be required to obtain a doctor's note before keeping the Minor Child home from school. Although Father has suggested that Mother is solely responsible for the Minor Child's attendance record, the Court does not find this to be true. Father admitted, for example, that he caused the Minor Child to miss three days of school during first grade when he took her on vacation.

It does appear, however, that Father is correct in suggesting that some of the Minor Child's absences from school have been unnecessary. The evidence establishes that, after the Minor Child was re-enrolled in Eagle Ridge for the 2009-2010 school year on a "probationary" basis with an express warning from the school about her attendance issues, the Minor Child missed only one day of school during an entire semester. Likewise, although the Minor Child missed six days of school during her first two months at Desert Willow, her attendance record improved dramatically after Father brought this issue to Mother's attention. In fact, since then the Minor Child did not miss a single day for the rest of the school year at Desert Willow. The fact that the Minor Child's absences from school drop whenever questions are raised about excessive absenteeism suggests that her absences are not always medically necessary.

Accordingly,

**IT IS ORDERED** that neither party shall keep the Minor Child home from school due to illness without medical verification of her illness, in the form of a note from a medical professional, and shall provide a copy of this note to the other party or to the Minor Child's school immediately upon request.

---

<sup>2</sup> If the Minor Child continues to have excessive absences from school, either party is, of course, free to request further modifications to the parenting time schedule to ensure that the Minor Child's weekday overnights are spent with a parent who will get her to school on time.



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2003-000681

10/07/2010

Father requests an order barring the Minor Child from sleeping in Mother's bed. As Father correctly notes, over two years ago the parties' parenting coordinator submitted a report to the Court stating in part as follows:

Both parents agree as of this date, [the Minor Child] will sleep in a separate bed in each parent's master bedroom. Both parents will have 2 months from this date to transition [the Minor Child] to sleep in her own room in a separate bed.

Parenting Coordinator Status Report dated October 27, 2007 at p. 1. The recommendations in this report were subsequently adopted as a court order. Minute Entry of February 20, 2008. Father testified that, despite the parties' agreement and the Court's subsequent order, Mother admitted to him that it was not until June or July of 2010 that the Minor Child "slept in her bed for the first time" at Mother's home. Father further testified that the Minor Child still does not sleep in her own bedroom because her bed is in Mother's bedroom.

In her testimony, Mother admitted that she has "no excuse" for allowing the Minor Child to sleep with her after the Minor Child turned four years old. Mother explained that she continued to allow the Minor Child to sleep in her bed until this year because

I just enjoyed seeing her because, honestly, I don't see her much. I see her at night, period.

Mother insisted, however, that she no longer allows the Minor Child to sleep in Mother's bed unless the Minor Child is sick. She further testified that, while the Minor Child still sleeps in her own bed in Mother's room "for the time being," she is transitioning the Minor Child to her own bedroom.

Father requests an order that, no later than December 2010, the Minor Child must sleep in her own bed, in her own bedroom, every night. The Court sees no need to issue such an order, for two reasons. First, an order that the Minor Child sleep in her own bed in her own bedroom has already been issued. *See* Minute Entry of February 20, 2008. Either party's failure to abide by the existing court order may subject such party to contempt sanctions, including, for example, a change in the overnight parenting time schedule. *See* A.R.F.L.P., Rule 92(E)(2). Second, in her testimony at the hearing, Mother acknowledged that it is not appropriate for the Minor Child to continue to sleep in Mother's bed or in Mother's bedroom. Since the parties are in agreement that an 8-year-old child should be able to sleep in her own bed in her own bedroom, the Court sees no need to issue further rulings on the matter. Accordingly,

**IT IS ORDERED** denying Father's request for additional orders regarding the Minor Child's sleeping arrangements.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2003-000681

10/07/2010

In summary,

**IT IS ORDERED** deny Respondent's Expedited Motion for Modification of Parenting Time and for Court to Make Determination Re: Educational Placement filed December 17, 2009, as moot in light of the subsequent filing of the Amended Petition to Modify Child Custody, Parenting Time and Final Education Decision-Making Authority.

**IT IS FURTHER ORDERED** that Respondent's Amended Petition to Modify Child Custody, Parenting Time, and Final Education Decision-Making Authority is granted in part and denied in part, as set forth above.

**IT IS FURTHER ORDERED** that each party shall bear his or her own attorneys' fees incurred in this matter.

**FILED:** Exhibit Worksheet

**IT IS FURTHER ORDERED** signing this Minute Entry as a formal written order of the Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/s/ HONORABLE DANIEL J. KILEY

---

HONORABLE DANIEL J. KILEY  
JUDGE OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.